IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAIPUR BENCH, JAIPUR

::JUDGMENT::

SHRI KAMAL SHARMA VS. THE ADDITIONAL CIVIL JUDGE AND OTHERS.

D.B.CIVIL SPECIAL APPEAL (W) NO.1038/2006 UNDER SECTION 18 OF THE RAJASTHAN HIGH COURT ORDINANCE 1949, AGAINST THE ORDER DATED 1.9.2006 PASSED IN SBCWP NO.3336/2004.

DATE OF JUDGMENT ::: 22.1.2007

PRESENT

HON'BLE MRS.GYAN SUDHA MISRA,J.
HON'BLE MR.K.C.SHARMA,J.

Mr. SR Surana for the appellant.
Mr. Ajeet Bhandari)
Mr. Kinshuk Jain)for the respondents.

BY THE COURT:

This appeal has been preferred against the order of the learned Single Judge before whom the appellants filed a writ petition that the decree passed in favour of respondent No.3 should be held inexecutable as the decree of eviction cannot be allowed to be executed against the tenant by the decree-holder which he had secured in a suit for specific performance. The learned Single Judge however was pleased to dismiss the writ petition against which this appeal has been preferred.

Initially we felt impressed with the submission of the counsel for the appellant that the decree of eviction cannot be allowed to be executed against a tenant by the decree-holder who had purchased the suit house after which a decree was also passed in his favour in a suit for specific performance.

We therefore called upon the counsel for the respondent Mr. Bhandari who explained the position and submitted that the respondent had filed a suit for specific performance against the vendor and a decree was passed in his favour by directing the vendor to execute the sale-deed. This decree was passed in the year 1986 and the appellant was inducted as a tenant into the suit premises after the respondent had secured a decree in his favour passed in a suit for specific performance. This fact was demonstrated by virtue of the rent-note which had been executed by the erstwhile landlord in favour of the appellant which is of the year 1990 from which it could be safely gathered that the appellant was inducted as a tenant into the suit premises in the year 1990 although the decree was passed in favour of the

respondent-landlord passing title in his favour in the year 1986 itself. It is thus obvious that the erstwhile landlord had no right to allow the appellant to be inducted as tenant as this right of the erstwhile landlord had already been extinguished by the decree in favour of the respondent to whom the title had passed way back in the year 1986 by virtue of the decree passed in a suit for specific performance. The appeal thus has no substance and hence it stands dismissed at the admission stage itself.

(K.C.SHARMA)J. (GYAN SUDHA MISRA)J.

PCG